

# ***APPENDIX B***

***DEPARTMENT OF THE INTERIOR APPROPRIATIONS ACT, PL  
105-83***

***CALIFORNIA STATE LEGISLATURE ASSEMBLY BILL 1986***

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# One Hundred Fifth Congress of the United States of America

## AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,  
the seventh day of January, one thousand nine hundred and ninety-seven*

## An Act

Making appropriations for the Department of the Interior and related agencies  
for the fiscal year ending September 30, 1998, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,* That the  
following sums are appropriated, out of any money in the Treasury  
not otherwise appropriated, for the fiscal year ending September  
30, 1998, and for other purposes, namely:

### TITLE I-DEPARTMENT OF THE INTERIOR

#### BUREAU OF LAND MANAGEMENT

#### MANAGEMENT OF LANDS AND RESOURCES

For expenses necessary for protection, use, improvement, development, disposal, cadastral surveying, classification, acquisition of easements and other interests in lands, and performance of other functions, including maintenance of facilities, as authorized by law, in the management of lands and their resources under the jurisdiction of the Bureau of Land Management, including the general administration of the Bureau, and assessment of mineral potential of public lands pursuant to Public Law 96-487 (16 U.S.C. 3150(a)), \$583,270,000, to remain available until expended, of which \$2,043,000 shall be available for assessment of the mineral potential of public lands in Alaska pursuant to section 1010 of Public Law 96-487 (16 U.S.C. 3150); and of which \$3,000,000 shall be derived from the special receipt account established by the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 4601-6a(i)); and of which \$1,500,000 shall be available in fiscal year 1998 subject to a match by at least an equal amount by the National Fish and Wildlife Foundation, to such Foundation for challenge cost share projects supporting fish and wildlife conservation affecting Bureau lands; in addition, \$27,650,000 for Mining Law Administration program operations, to remain available until expended, to be reduced by amounts collected by the Bureau and credited to this appropriation from annual mining claim fees so as to result in a final appropriation estimated at not more than \$583,270,000; and in addition, not to exceed \$5,000,000, to remain available until expended, from annual mining claim fees; which shall be credited to this account for the costs of administering the mining claim fee program, and \$2,000,000 from communication site rental fees established by the Bureau for the cost of administering communication site activities: *Provided*, That appropriations herein made

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(f) SUNSET.-If amounts are not assumed by the concurrent budget resolution and appropriated from the Fund by December 15, 1998, the Fund shall terminate and the amounts in the Fund including the accrued interest shall be applied to reduce the Federal deficit.

### TITLE V-PRIORITY LAND ACQUISITIONS, LAND EXCHANGES, AND MAINTENANCE

For priority land acquisitions, land exchange agreements, other activities consistent with the Land and Water Conservation Fund Act of 1965, as amended, and critical maintenance to be conducted by the Bureau of Land Management, the United States Fish and Wildlife Service, the National Park Service and the Forest Service, \$699,000,000, to be derived from the Land and Water Conservation Fund notwithstanding any other provision of law, to remain available until September 30, 2001, of which \$167,000,000 is available to the Secretary of Agriculture and \$532,000,000 is available to the Secretary of the Interior: *Provided*, That of the funds made available to the Secretary of Agriculture, not to exceed \$65,000,000 may be used to acquire interests to protect and preserve Yellowstone National Park, pursuant to the terms and conditions set forth in sections 502 and 504 of this title, and \$12,000,000 may be used for the rehabilitation and maintenance of the Beartooth Highway pursuant to section 502 of this title: *Provided further*, That of the funds made available to the Secretary of the Interior, not to exceed \$250,000,000 may be used to acquire interests to protect and preserve the Headwaters Forest, pursuant to the terms and conditions set forth in sections 501 and 504 of this title, and \$10,000,000 may be used for a direct payment to Humboldt County, California pursuant to section 501 of *this* title: *Provided further*, That the Secretary of the Interior and the Secretary of Agriculture, after consultation with the heads of the Bureau of Land Management, the United States Fish and Wildlife Service, the National Park Service and the Forest Service, shall, in fiscal year 1998 and each of the succeeding three fiscal years, jointly submit to Congress a report listing the lands and interests in land that the Secretaries propose to acquire or exchange and the maintenance requirements they propose to address using funds provided under this heading for purposes other than the purposes of sections 501 and 502 of this title: *Provided further*, That none of the funds appropriated under this title for purposes other than the purposes of sections 501 and 502 of this title shall be available until the House Committee on Appropriations and the Senate Committee on Appropriations approve, in writing, a list of projects to be undertaken with such funds: *Provided further*, That moneys provided in this title, when combined with moneys provided by other titles in this Act, shall, for the purposes of section 205(a) of H. Con. Res. 84 (105th Congress), be considered to provide \$700,000,000 in budget authority for fiscal year 1998 for Federal land acquisitions and to finalize priority land exchanges.

SEC. 501. HEADWATERS FOREST AND ELK RIVER PROPERTY ACQUISITION. (a) AUTHORIZATION.-Subject to the terms and conditions of this section, up to \$250,000,000 from the Land and Water Conservation Fund is authorized to be appropriated to acquire lands referenced in the Agreement of September 28, 1996, which consist of approximately 4,500 acres commonly referred to as the

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"Headwaters Forest", approximately 1,125 acres referred to as the "Elk Head Forest", and approximately 9,600 acres referred to as the "Elk River Property", which are located in Humboldt County, California. This section is the sole authorization for the acquisition of such property, which is the subject of the Agreement dated September 28, 1996 between the United States of America (hereinafter "United States"), the State of California, MAXXAM, Inc., and the Pacific Lumber Company. Of the entire Elk River Property, the United States and the State of California are to retain approximately 1,845 acres and transfer the remaining approximately 7,755 acres of Elk River Property to the Pacific Lumber Company. The property to be acquired and retained by the United States and the State of California is that property that is the subject of the Agreement of September 28, 1996 as generally depicted on maps labeled as sheets 1 through 7 of Township 3 and 4 North, Ranges 1 East and 1 West, of the Humboldt Meridian, California, titled "Dependent Resurvey and Tract Survey", as approved by Lance J. Bishop, Chief Cadastral Surveyor-California, on August 29, 1997. Such maps shall be on file in the Office of the Chief Cadastral Surveyor, Bureau of Land Management, Sacramento, California. The Secretary of the Interior is authorized to make such typographical and other corrections to this description as are mutually agreed upon by the parties to the Agreement of September 28, 1996. The land retained by the United States and the State of California (approximately 7,470 acres) shall hereafter be the "Headwaters Forest". Any funds appropriated by the Federal Government to acquire lands or interests in lands that enlarge the Headwaters Forest by more than five acres per each acquisition shall be subject to specific authorization enacted subsequent to this Act, except that such funds may be used pursuant to existing authorities to acquire such lands up to five acres per each acquisition or interests in lands that may be necessary for roadways to provide access to the Headwaters Forest.

(b) EFFECTIVE PERIOD OF AUTHORIZATION.-The authorization in subsection (a) expires March 1, 1999 and shall become effective only-

(1) when the State of California provides a \$130,000,000 contribution for the transaction;

(2) when the State of California approves a Sustained Yield Plan covering Pacific Lumber Company timber property;

(3) when the Pacific Lumber Company dismisses the following legal actions as evidenced by instruments in form and substance satisfactory to each of the parties to such legal actions: Pacific Lumber Co. v. United States, No. 96-257L (Fed. Cls.) and Salmom Creek Corp. v. California Board of Forestry, No. 96-CS-1057 (Cal. Super. Ct.);

(4) when the incidental take permit under section 10(a) of the Endangered Species Act (based upon a multispecies Habitat Conservation Plan covering Pacific Lumber Company timber property, including applicable portions of the Elk River Property) is issued by the United States Fish and Wildlife Service and the National Marine Fisheries Service;

(5) after an appraisal of all lands and interests therein to be acquired by the United States has been undertaken, such appraisal has been reviewed for a period not to exceed 30 days by the Comptroller General of the United States, and such appraisal has been provided to the Committee on

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Resources of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the Committees on Appropriations of the House and Senate;

(6) after the Secretary of the Interior issues an opinion of value to the Committee on Resources of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the Committees on Appropriations of the House and Senate for the land and property to be acquired by the Federal Government. Such opinion of value shall also include the total value of all compensation (including tax benefits) proposed to be provided for the acquisition;

(7) after an Environmental Impact Statement for the proposed Habitat Conservation Plan has been prepared and completed in accordance with the applicable provisions of the National Environmental Policy Act of 1969; and

(8) when adequate provision has been made for public access to the property.

(c) ACQUISITION.-Notwithstanding any other provision of law, the amount paid by the United States to acquire identified lands and interests in lands referred to in section 501(a) may differ from the value contained in the appraisal required by section 501(b)(5) if the Secretary of the Interior certifies, in writing, to Congress that such action is in the best interest of the United States.

(d) HABITAT CONSERVATION PLAN.-

(1) APPLICABLE STANDARDS.-Within 60 days after the enactment of this section, the Secretary of the Interior and the Secretary of Commerce shall report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives on the scientific and legal standards and criteria for threatened, endangered, and candidate species under the Endangered Species Act and any other species used to develop the habitat conservation plan (hereinafter "HCP") and the section 10(a) incidental take permit for the Pacific Lumber Company land.

(2) REPORT.-If the Pacific Lumber Company submits an application for an incidental take permit under section 10(a) of the Endangered Species Act for the transaction authorized by subsection (a), and the permit is not issued, then the United States Fish and Wildlife Service and the National Marine Fisheries Service shall set forth the substantive rationale or rationales for why the measures proposed by the applicant for such permit did not meet the issuance criteria for the species at issue. Such report shall be submitted to the Congress within 60 days of the decision not to issue such permit or by May 1, 1999, whichever is earlier.

(3) HCP STANDARDS.-If a section 10(a) permit for the Pacific Lumber Company HCP is issued, it shall be deemed to be unique to the circumstances associated with the acquisition authorized by this section and shall not establish a higher or lesser standard for any other multispecies HCPs than would otherwise be established under existing law.

(e) PAYMENT TO HUMBOLDT COUNTY.-Within 30 days of the acquisition of the Headwaters Forest, the Secretary of the Interior shall provide a \$10,000,000 direct payment to Humboldt County, California.

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(f) PAYMENT IN LIEU OF TAXES. The Federal portion of the Headwaters Forest acquired pursuant to this section shall be entitlement land under section 6905 of title 31 of the United States Code.

(g) OUT-YEAR BUDGET LIMITATIONS.-The following funding limitations and parameters shall apply to the Headwaters Forest acquired under subsection (a)-

(1) At least 50 percent of the total funds for management of such lands above the annual level of \$100,000 shall (with the exception of law enforcement activities and emergency activities) be from non-Federal sources.

(2) Subject to appropriations, the authorized annual Federal funding for management of such land is \$300,000 (with the exception of law enforcement activities and emergency activities).

(3) The Secretary of the Interior or the Headwaters Forest Management Trust referenced in subsection (h) is authorized to accept and use donations of funds and personal property from the State of California, private individuals, and other nongovernmental entities for the purpose of management of the Headwaters Forest.

(h) HEAD WATERS FOREST MANAGEMENT TRUST.-The Secretary of the Interior is authorized, with the written concurrence of the Governor of the State of California, to establish a Headwaters Forest Management Trust ("Trust") for the management of the Headwaters Forest as follows:

(1) MANAGEMENT AUTHORITY.-The Secretary of the Interior is authorized to vest management authority and responsibility in the Trust composed of a board of five trustees each appointed for terms of three years. Two trustees shall be appointed by the Governor of the State of California. Three trustees shall be appointed by the President of the United States. The first group of trustees shall be appointed within 60 days of exercising the authority under this subsection and the terms of the trustees shall begin on such day. The Secretary of the Interior, the Secretary of Resources of the State of California, and the Chairman of the Humboldt County Board of Supervisors shall be nonvoting, ex officio members of the board of trustees. The Secretary is authorized to make grants to the Trust for the management of the Headwaters Forest from amounts authorized and appropriated.

(2) OPERATIONS.-The Trust shall have the power to develop and implement the management plan for the Headwaters Forest.

(i) MANAGEMENT PLAN.-

(1) IN GENERAL.-A concise management plan for the Headwaters Forest shall be developed and periodically amended as necessary by the Secretary of the Interior in consultation with the State of California (and in the case that the authority provided in subsection (h) is exercised, the trustees shall develop and periodically amend the management plan), and shall meet the following requirements:

(A) Management goals for the plan shall be to conserve and study the land, fish, wildlife, and forests occurring on such land while providing public recreation opportunities and other management needs.

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(B) Before a management structure and management plan are adopted for such land, the Secretary of the Interior or the board of trustees, as the case may be, shall submit a proposal for the structure and plan to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives. The proposed management plan shall not become effective until the passage of 90 days after its submission to the Committees.

(C) The Secretary of the Interior or the board of trustees, as the case may be, shall report annually to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the House and Senate Committees on Appropriations concerning the management of lands acquired under the authority of this section and activities undertaken on such lands.

(2) PLAN.-The management plan shall guide general management of the Headwaters Forest. Such plan shall address the following management issues-

(A) scientific research on forests, fish, wildlife, and other such activities that will be fostered and permitted on the Headwaters Forest;

(B) providing recreation opportunities on the Headwaters Forest;

(C) access to the Headwaters Forest;

(D) construction of minimal necessary facilities within the Headwaters Forest so as to maintain the ecological integrity of the Headwaters Forest;

(E) other management needs; and

(F) an annual budget for the management of the Headwaters Forest, which shall include a projected revenue schedule (such as fees for research and recreation) and projected expenses.

(3) COMPLIANCE.-The National Environmental Policy Act shall apply to the development and implementation of the management plan.

(i) COOPERATIVE MANAGEMENT.-

(1) The Secretary of the Interior may enter into agreements with the State of California for the cooperative management of any of the following: Headwaters Forest, Redwood National Park, and proximate State lands. The purpose of such agreements is to acquire from and provide to the State of California goods and services to be used by the Secretary and the State of California in cooperative management of lands if the Secretary determines that appropriations for that purpose are available and an agreement is in the best interests of the United States; and

(2) an assignment arranged by the Secretary under section 3372 of title 5, United States Code, of a Federal or State employee for work in any Federal or State of California lands, or an extension of such assignment, may be for any period of time determined by the Secretary or the State of California, as appropriate, to be mutually beneficial.

SEC. 502. PROTECTION AND PRESERVATION OF YELLOWSTONE NATIONAL PARK-ACQUISITION OF CROWN BUTTE MINING INTERESTS.

(a) AUTHORIZATION.-Subject to the terms and conditions of this



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section, up to \$65,000,000 from the Land and Water Conservation Fund is authorized to be appropriated to acquire identified lands and interests in lands referred to in the Agreement of August 12, 1996 to protect and preserve Yellowstone National Park.

(b) CONDITIONS OF ACQUISITION AUTHORITY.-The Secretary of Agriculture may not acquire the District Property until:

(1) the parties to the Agreement have entered into and lodged with the United States District Court for the District of Montana a consent decree as required under the Agreement that requires, among other things, Crown Butte to perform response or restoration actions (or both) or pay for such actions in accordance with the Agreement;

(2) an appraisal of the District Property has been undertaken, such appraisal has been reviewed for a period not to exceed 30 days by the Comptroller General of the United States, and such appraisal has been provided to the Committee on Resources of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the House and Senate Committees on Appropriations;

(3) after the Secretary of Agriculture issues an opinion of value to the Committee on Resources of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the House and Senate Committees on Appropriations for the land and property to be acquired by the Federal Government; and

(4) the applicable requirements of the National Environmental Policy Act have been met.

(c) ACQUISITION.-Notwithstanding any other provision of law, the amount paid by the United States to acquire identified lands and interests in lands referred to in the Agreement of August 12, 1996 to protect and preserve Yellowstone National Park may exceed the value contained in the appraisal required by section 502(b)(2) if the Secretary of Agriculture certifies, in writing, to Congress that such action is in the best interest of the United States.

(d) DEPOSIT IN ACCOUNT.-Immediately upon receipt of payments from the United States, Crown Butte shall deposit \$22,500,000 in an interest bearing account in a private, federally chartered financial institution that, in accordance with the Agreement, shall be-

(1) acceptable to the Secretary of Agriculture; and

(2) available to carry out response and restoration actions.

The balance of amounts remaining in such account after completion of response and restoration actions shall be available to the Secretary of Agriculture for use in the New World Mining District for any environmentally beneficial purpose otherwise authorized by law.

(e) MAINTENANCE AND REHABILITATION OF BEARTOOTH HIGHWAY.-

(1) MAINTENANCE.-The Secretary of Agriculture shall, consistent with the funds provided herein, be responsible for-

(A) snow removal on the Beartooth Highway from milepost 0 in Yellowstone National Park, into and through Wyoming, to milepost 43.1 on the border between Wyoming and Montana; and

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(B) pavement preservation, in conformance with a pavement preservation plan, on the Beartooth Highway from milepost 8.4 to milepost 24.5.

(2) REHABILITATION.-The Secretary of Agriculture shall be responsible for conducting rehabilitation and minor widening of the portion of the Beartooth Highway in Wyoming that runs from milepost 24.5 to milepost 43.1.

(3) AUTHORIZATION OF APPROPRIATIONS.-There is authorized to be appropriated to the Secretary of Agriculture-

(A) for snow removal and pavement, preservation under paragraph (1), \$2,000,000; and

(B) for rehabilitation under paragraph (2), \$10,000,000.

(4) AVAILABILITY OF FUNDS.-Within 30 days of the acquisition of lands and interests in lands pursuant to this section, the funds authorized in subsection (e)(3) and appropriated herein for that purpose shall be made available to the Secretary of Agriculture.

(f) RESPONSE AND RESTORATION PLAN.-The Administrator of the Environmental Protection Agency and the Secretary of Agriculture shall approve or prepare a plan for response and restoration activities to be undertaken pursuant to the Agreement and a quarterly accounting of expenditures made pursuant to such plan. The plan and accountings shall be transmitted to the Committee on Resources of the House of Representatives, the Senate Committee on Energy and Natural Resources and the House and Senate Committees on Appropriations.

(g) MAP.-The Secretary of Agriculture shall provide to the Committee on Resources of the House of Representatives, the Senate Committee on Energy and Natural Resources and the House and Senate Committees on Appropriations, a map depicting the acreage to be acquired pursuant to this section.

(h) DEFINITIONS.-In this section:

(1) AGREEMENT.-The term "Agreement" means the agreement in principle, concerning the District Property, entered into on August 12, 1996 by Crown Butte Mines, Inc., Crown Butte Resources Ltd., Greater Yellowstone Coalition, Northwest Wyoming Resource Council, Sierra Club, Gallatin Wildlife Association, Wyoming Wildlife Federation, Montana Wildlife Federation, Wyoming Outdoor Council, Beartooth Alliance, and the United States of America, with such other changes mutually agreed to by the parties.

(2) BEARTOOTH HIGHWAY.-The term "Beartooth Highway" means the portion of United States Route 212 that runs from the northeast entrance of Yellowstone National Park near Silver Gate, Montana, into and through Wyoming to Red Lodge, Montana.

(3) CROWN BUTTE.-The term "Crown Butte" means Crown Butte Mines, Inc. and Crown Butte Resources Ltd., acting jointly.

(4) DISTRICT PROPERTY.-The term "District Property" means the portion of the real property interests specifically described as District Property in appendix B of the Agreement.

(5) NEW WORLD MINING DISTRICT.-The term "New World Mining District" means the New World Mining District as specifically described in appendix A of the Agreement.

SEC. 503. CONVEYANCE TO STATE OF MONTANA. (a) CONVEYANCE REQUIREMENT.-Not later than January 1, 2001, but not prior to

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180 days after the enactment of this Act, the Secretary of the Interior shall convey to the State of Montana, without consideration, all right, title, and interest of the United States in and to-

(1) \$10,000,000 in Federal mineral rights in the State of Montana agreed to by the Secretary of the Interior and the Governor of Montana through negotiations in accordance with subsection (b); or

(2) all Federal mineral rights in the tracts in Montana depicted as Otter Creek number 1, 2, and 3 on the map entitled "Ashland Map".

(b) NEGOTIATIONS.-The Secretary of the Interior shall promptly enter into negotiations with the Governor of Montana for purposes of subsection (a)(1) to determine and agree to mineral rights owned by the United States having a fair market value of \$10,000,000.

(c) FEDERAL LAW NOT APPLICABLE TO CONVEYANCE.-Any conveyance under subsection (a) shall not be subject to the Mineral Leasing Act (30 U.S.C. 181 et seq.).

(d) AVAILABILITY OF MAP.-The Secretary of the Interior shall keep the map referred to in subsection (a)(2) on file and available for public inspection in appropriate offices of the Department of the Interior located in the District of Columbia and Billings, Montana, until January 1, 2001.

(e) CONVEYANCE DEPENDENT UPON ACQUISITION.-No conveyance pursuant to subsection (a) shall take place unless the acquisition authorized in section 502(a) is executed.

SEC. 504. The acquisitions authorized by sections 501 and 502 of this title may not occur prior to the earlier of: (1) 180 days after enactment of this Act; or (2) enactment of separate authorizing legislation that modifies section 501, 502, or 503 of this title. Within 120 days of enactment, the Secretary of the Interior and the Secretary of Agriculture, respectively, shall submit to the Committee on Resources of the House of Representatives, the Senate Committee on Energy and Natural Resources and the House and Senate Committees on Appropriations, reports detailing the status of efforts to meet the conditions set forth in this title imposed on the acquisition of the interests to protect and preserve the Headwaters Forest and the acquisition of interests to protect and preserve Yellowstone National Park. For every day beyond 120 days after the enactment of this Act that the appraisals required in subsections 501(b)(5) and 502(b)(2) are not provided to the Committee on Resources of the House, the Committee on Energy and Natural Resources of the Senate and the House and Senate Committees on Appropriations in accordance with such subsections, the 180-day period referenced in this section shall be extended by one day.

SEC. 505. The Land and Water Conservation Fund Act of 1965 (Public Law 88-578; 78 Stat. 897) (16 U.S.C. 4601-4 through 11) is amended by moving section 13 (as added by section 1021(b) of the Omnibus Parks and Public Lands Management Act of 1996; 110 Stat. 4210) so as to appear in title I of that Act following section 12.

TITLE VI-FOREST RESOURCES CONSERVATION AND  
SHORTAGE RELIEF

SEC. 601. SHORT TITLE.-This title may be cited as the "Forest Resources Conservation and Shortage Relief Act of 1997".



## **AB 1986 Headwaters Forest, Owl Creek, and Grizzly Creek:**

BILL NUMBER: AB 1986 AMENDED 08/31/98

AMENDED IN SENATE AUGUST 31,1998  
AMENDED IN SENATE AUGUST 28,1998  
AMENDED IN SENATE AUGUST 12,1998  
AMENDED IN SENATE JULY 7,1998  
AMENDED IN ASSEMBLY APRIL 2,1998

Introduced by Assembly Member Migden

February 17, 1998

An act relating to forest resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1986, as amended, Migden. Headwaters Forest and, Owl Creek, *and Grizzly Creek*: appropriation.

Existing law recognizes the importance of protecting and preserving forest resources.

This bill would appropriate ~~\$130,500,000~~ \$130,000,000 from the General Fund to the Controller for allocation to the Wildlife Conservation Board, for ~~expenditure without regard to fiscal year~~ *until July 1, 1999*, to acquire specified lands known as the Headwaters Forest Preserve, the Elk Head Forest, and the Elk River Property, which are located in the County of Humboldt, in accordance with specified requirements, ~~and for administrative expenses~~. The bill would prohibit any funds appropriated under the bill from being encumbered until specified conditions have occurred.

The bill would also appropriate \$80,000,000 from the General Fund to the Controller for allocation to the ~~Wildlife Conservation Board~~ *board, until July 2001*, for ~~expenditure without regard to fiscal year~~, to purchase a specified tract of land identified as "Owl Creek" ~~on the map titled "Murrelet Conservation Areas," which is on file in the Office of the Secretary of the Resources Agency, as specified~~.

*The bill would also appropriate from the General Fund to the Controller, \$15,000,000 for allocation to the County of Humboldt for economic assistance, up to \$20,000,000 for*

*allocation to the board for the purchase of the Grizzly Creek Marbled Murrelet Conservation Area, and \$500,000 for allocation to the board for administrative expenses and costs related to the acquisition of those properties.*

The bill would declare that it is to take effect immediately as any urgency statute.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: **yes** no.

*The people of the State of California do enact as follows:*

SECTION 1. (a) The sum of two hundred ~~ten~~ forty-five million five hundred thousand dollars ~~(\$210,500,000)~~ (\$245,500,000) is hereby appropriated to the Controller from the General Fund ~~for allocation to the Wildlife Conservation Board in accordance with Sections 2 and 5 of this act. Of the funds~~ for allocation in accordance with subdivision (b) and Sections 2 and 5 of this act.

*(b) Of the funds appropriated by this section, fifteen million dollars (\$15,000,000) shall be available for economic assistance for the County of Humboldt, up to \$20,000,000 shall be allocated to the Wildlife Conservation Board and be available for the purchase at fair market value of the Grizzly Creek Marbled Murrelet Conservation Area, and up to five hundred thousand dollars (\$500,000) shall be available to the Wildlife Conservation Board for expenditure for administrative expenses and costs related to the acquisition of properties authorized by this act.*

*(c) Notwithstanding any other provision of law:*

*(1) Funds appropriated pursuant to subdivision (a) for the purposes of Sections 2 and 3 of this act shall only be available until July 1, 1999, and as of that date shall revert to the General Fund.*

*(2) Funds appropriated pursuant to subdivision (a) for the purposes of Section 5 of this act shall only be available from July 1, 1999, until June 30, 2001, and as of that date shall revert to the General Fund.*

*(d) Funds appropriated pursuant to subdivision (a) shall be encumbered only if the United States Government has encumbered two hundred fifty million dollars (\$250,000,000) as matching funds in fulfillment of the agreement dated September 28, 1996, among the United States of America, the State of California, MAXXAM Inc., and the Pacific Lumber Company, and any subsequent agreements adopted pursuant thereto.*

SEC. 2. (a) Of the funds appropriated by Section 1 of this act, one hundred thirty million dollars (\$130,000,000) is to be allocated to the Wildlife Conservation Board, subject to the conditions established pursuant to Section 3 of this act, for expenditure, notwithstanding Section 13340 of the Government Code, without regard to fiscal years, to

acquire the lands referenced in the Agreement dated September 28, 1996, which consist of approximately 4,500 acres commonly referred to as the Headwaters Forest, approximately 1,125 acres referred to as the Elk Head Forest, and approximately 9,600 acres referred to as the Elk River Property, which are located in the County of Humboldt, California *for the purposes of consummating the Agreement dated September 28, 1996* .

(b) This section is intended to provide the sole authority for the acquisition of the property, referenced in subdivision (a), that is the subject of the Agreement dated September 28, 1996, between the United States of America (hereafter, United States), the State of California, MAXXAM, Inc., and the Pacific Lumber Company (hereafter, Company). Of the entire Elk River Property, the United States and the State of California are to receive approximately 1,845 acres and the remaining approximately 7,755 acres of Elk River Property is to be transferred to the Company. The property to be acquired by the United States and the State of California is that property that is the subject of the Agreement dated September 28, 1996, as generally depicted on maps labeled as sheets 1 through 7 of Township 3 and 4 North, Ranges 1 East and 1 West, of the Humboldt Meridian, California, titled "Dependent Resurvey and Tract Survey," as approved by Lance J. Bishop, Chief Cadastral Surveyor, Bureau of Land Management, Sacramento, California. The land acquired by the United States and the State of California, which consists of approximately 7,470 acres, shall hereafter be known as the Headwaters Forest Preserve.

SEC. 3. Notwithstanding any other provision of law, funds appropriated by this act shall only be encumbered by the board if the final habitat conservation plan (hereafter "final HCP"), implementing agreement, and permits to allow the incidental take of threatened and endangered species, the drafts of which are more fully described in the notice published in the Federal Register on July 7, 1998 (hereafter "Draft Habitat Conservation Plan" or "Draft HCP") incorporate *at minimum*, the following additional conditions *and the final HCP is no less protective of aquatic or avian species than the draft HCP, as amended by those conditions*:

(a) The final HCP shall establish a no-cut buffer of 100 feet on each side of each class 1 watercourse until all of the following conditions are met:

(1) The watershed analysis process described in the draft HCP has been completed for that watercourse, *and the watershed assessment has been reviewed by the United States Fish and Wildlife Service and the United States National Marine Fisheries Service* .

(2) The United States Fish and Wildlife Service or the National Marine Fisheries Service have established site-specific prescriptions for that watercourse. *If the United States Fish and Wildlife Service or the United States National Marine Fisheries Service establish site-specific prescriptions that differ from prescriptions proposed in the watershed assessment, the agency shall state in writing its reasons **for** doing so.*

(3) The site-specific prescriptions established by the United States Fish and Wildlife Service or the National Marine Fisheries Service have been implemented on that watercourse.

(b) The final HCP shall establish a no-cut buffer of 30 feet on each side of each class 2 watercourse, which shall remain in effect until all of the following conditions are met:

(1) The watershed analysis process described in the draft HCP has been completed for that watercourse, *and the watershed assessment has been reviewed by the United States Fish and Wildlife Service and the United States National Marine Fisheries Service* .

(2) The United States Fish and Wildlife Service or the National Marine Fisheries Service have established site-specific prescriptions for that watercourse.

(3) The site-specific prescriptions established by the United States Fish and Wildlife Service or the National Marine Fisheries Service have been implemented on that watercourse. *If the United States Fish and Wildlife Service or the United States National Marine Fisheries Service establish site-specific prescriptions that differ from prescriptions proposed in the watershed assessment, either of those services shall state in writing its reasons for doing so.*

(c) Except as provided in subdivisions (a), (b), ~~and (1) the final HCP shall incorporate into the draft HCP all~~ (d), and (j), the final HCP shall establish all those restrictions on class 1, 2, and 3 watercourses contained in the January 7, 1998, document entitled "Corrected Version Draft--Interagency Federal-State Aquatic Strategy and Mitigation for Timber Harvest and Roads for the Pacific Lumber Company," which shall remain in effect until all of the following conditions are met:

(1) The watershed analysis process described in the draft HCP has been completed for each watercourse, *and the watershed assessment has been reviewed by the United States Fish and Wildlife Service and the United States National Marine Fisheries Service* .

(2) The United States Fish and Wildlife Service or the National Marine Fisheries Service have established site-specific prescriptions for each watercourse.

(3) The site-specific prescriptions established by the United States Fish and Wildlife Service or the National Marine Fisheries Service have been implemented on that watercourse.- *If the United States Fish and Wildlife Service or the United States National Marine Fisheries Service establish site-specific prescriptions that differ from prescriptions proposed in the watershed assessment, the agency shall state in writing its reasons for doing so.*

~~(d) The draft HCP shall provide that in those cases where a site-specific watershed prescription has been proposed by the United States National Marine Fisheries Service or the United States Fish and Wildlife Service, the company may request an independent~~



~~peer review of the proposed prescription. The peer review shall be conducted in accordance with the following procedures:~~

~~(1) The company, and the United States Fish and Wildlife Service or the National Marine Fisheries Service, shall each select a peer reviewer, and those two peer reviewers shall select a third peer reviewer. Each peer reviewer shall have a Ph.D. in fisheries biology and shall have at least five years experience in working on aquatic species protection.~~

~~(2) The peer reviewers shall, within 30 days of selection, review the proposed prescription and determine whether or not the prescription is scientifically valid. If the peer review is not completed within 30 days, the prescription may be adopted by the United States Fish and Wildlife Service or the National Marine Fisheries Service.~~

~~(3) The determination of the peer reviewers shall be forwarded in writing to the United States Fish and Wildlife Service or the National Marine Fisheries Service for final review. If the United States Fish and Wildlife Service or the National Marine Fisheries Service imposes a prescription that the peer reviewers have determined not to be scientifically valid, the United States Fish and Wildlife Service or the National Marine Fisheries Service shall state in writing its reasons for adopting the prescription.~~

~~(4) Nothing in this subdivision shall affect the authority of the United States Fish and Wildlife Service or the National Marine Fisheries Service to adopt a site specific watershed prescription pursuant to subdivision (a), (b), or (c).~~

~~(e)~~

(d) The final HCP shall require that any site-specific prescriptions that are **recommended** *established* by the United States Fish and Wildlife Service or the National Marine Fisheries Service, upon completion of the watershed analysis, shall be implemented by the Company so that those prescriptions result in a no-cut buffer of not less than 30 feet, and not more than 170 feet, on each side of each class 1 and class 2 watercourse.

~~(f) However, with respect to the minimum 30 foot no-cut buffer on Class 2 watercourses, the United States Fish and Wildlife Service or the United States National Marine Fisheries Service may adjust the buffer if it determines that it will benefit aquatic habitat or species. However, in no event may the minimum 30 foot no-cut buffer be less than that distance established under the draft HCP.~~

(e) The final HCP shall provide that the United States Fish and Wildlife Service and the United States National Marine Fisheries Service, in consultation with the Department of Forestry and Fire Protection, *the regional water quality control board*, and the Department of Fish and Game, shall develop a peer review process to evaluate, on a spot-check basis, the appropriateness of completed analyses and prescriptions that are developed through the watershed analysis process.

~~(g)~~

(f) The final HCP shall provide that the Company, in consultation with the National Marine Fisheries Service and the United States Fish and Wildlife Service, shall establish a schedule that results in completion of the watershed analysis process within five years.

~~(h)~~

(g) The final HCP shall prohibit timber harvesting, including salvage logging and other management activities that are detrimental to the marbled murrelet or marbled murrelet habitat in the Marbled Murrelet ~~Protection~~ Conservation Areas for the ~~50-year~~ life of the incidental take permits, *as defined in the February 27, 1998, document entitled "Pre-Permit Application Agreement in Principle"* that are in effect in the following tracts of remnant and residual ancient forest that are depicted in the map titled "Murrelet Conservation Areas" that is on file in the office of the Secretary of the Resources Agency:

- (i) Elk Head Residual ..... 564 acres
- (ii) Cooper Mill ..... 722 acres
- (iii) Allen Creek ..... 1,421 acres
- (iv) Allen Creek Extension ..... 301 acres
- (v) Road 3 ..... 659 acres
- (vi) Owl Creek ..... 904 acres
- (vii) Shaw Gift ..... 548 acres
- (viii) Right Road 9 ..... 322 acres
- (ix) Road 7 and 9 North ..... 501 acres
- (x) Booth's Run ..... 776 acres
- (xi) Bell Lawrence ..... 634 acres
- (xii) Lower North Fork Elk ..... 531 acres

~~(i)~~

*(h) The acreages established pursuant to subdivision (g) may be adjusted by the United States Fish and Wildlife Service or the United States National Marine Fisheries Service, provided that the adjustments are made to more accurately describe Marbled Murrelet habitat. However, in no event shall the acreages be any less than those acreages established pursuant to the draft HCP.*

(i) The final HCP shall prohibit the Company from timber harvesting, including salvage logging and other management activities, in the tract identified as the "Grizzly Creek Marbled Murrelet Conservation Area," as depicted on the map titled "Murrelet Conservation Areas," which is on file in the Office of the Secretary of the Resources Agency, for five years from the date of adoption of the final HCP to provide an opportunity for the purchase, and permanent protection of, that tract.

(j) The final HCP shall impose conditions on road-related activities that, *on balance, are* no less protective of species and habitat than the provisions contained in the February 27, 1998, document entitled “Pre-Permit Application Agreement in Principle.”

(k) The final HCP shall require that the company shall submit all timber harvesting plans *covering lands* that are subject to the final HCP and the incidental take permit for review and comment, and for a finding as to whether or not the timber harvesting plan is consistent with the final HCP, to the United States National Marine Fisheries Service and the United States Fish and Wildlife Service at least 30 days prior to the earliest possible date of the timber harvesting plan approval by the Department of Forestry and Fire Protection. *Nothing in this section shall affect the authority of the Department of Forestry and Fire Protection to approve or disapprove timber harvesting plans under state or federal law.*

(l) The Legislature finds and declares the following:

(1) The final approval or disapproval of the draft HCP is exclusively within the jurisdiction of federal law and those agencies that implement federal law.

(2) It is the intent of the Legislature in authorizing the expenditure of funds pursuant to Section 2 of this act, and in establishing conditions on the use of those funds pursuant to this section, that the final HCP approved by the United States Fish and Wildlife Service and the National Marine Fisheries Service will incorporate the conditions set forth in this section and not be any less protective of aquatic or avian species than the provisions of this section.

SEC. 4. The sustained yield plan and any subsequent *sustained yield* plans for the Pacific Lumber Company (hereafter, Company) referenced in the Agreement dated September 28, 1996, between the United States of America, the State of California, MAXXAM, Inc., and the Company and prepared pursuant to that agreement, and any timber harvest plans prepared by the Company *covering lands subject to the final HCP adopted* pursuant thereto, shall comply with those conditions set forth in Section 3 of this act, with the Applications for Permits to Allow Incidental Take of Threatened and Endangered Species, and the Habitat Conservation Plan and Implementation Agreement, as more fully described in the notice published in the Federal Register on July 7, 1998, and may not be any less protective of aquatic or avian species than the provisions of this act. *Nothing in this section shall be construed as requiring the Department of Forestry and Fire Protection to make any additional findings relative to timber harvest plans pursuant to this section, other than those findings that are already required the law as it read on the effective date of this act.*

SEC. 5. (a) Of the funds appropriated by Section 1 of this act, up to eighty million dollars (\$80,000,000) is to be allocated to the Wildlife Conservation Board for expenditure by the board, effective July 1, 1999, notwithstanding Section 13340 of the Government Code, without regard to fiscal year, *and subject to compliance with the conditions*

*established pursuant to Section 3 and 4 of this act, to be applied to the purchase price of purchasing for fair market value the area identified as "Owl Creek" (MMCA) in the draft Habitat Conservation Plan submitted by Pacific Lumber Company, dated July 1998. as part of completing the Headwaters Agreement of September 28, 1996. To the extent funds allocated pursuant to this section remain after the purchase of the "Owl Creek" Tract, those funds may be reappropriated for the acquisition, at fair market value, of the tracts known as the "Elk River Property" and the previously unlogged ancient Douglas Fir forestland within the Mattole River watershed.*

(1) The Wildlife Conservation Board is hereby authorized to purchase for its fair market value the tract of land identified in subdivision (a) as "Owl Creek".

(2) The Wildlife Conservation Board shall undertake an appraisal of the tract of land described in paragraph (1) to determine its fair market value. The appraisal shall be conducted by three qualified appraisers to be selected as follows:

(A) One appraiser selected by the Pacific Lumber Company.

(B) One appraiser selected by the board.

(C) One appraiser selected by the appraisers selected pursuant to subparagraphs (A) and (B).

~~(3) The listing of the "Owl Creek" tract under paragraph (vi) of subdivision (h) of Section 3 of this act shall not be a factor in the appraisal of the fair market value of that tract under this section.~~

~~(e)~~

*(b) At the option of the Pacific Lumber Company, the appraisal methodology may assume the issuance of all necessary permits and approvals for the management of the "Owl Creek" tract as described in the draft HCP, including incidental take permits under the California and federal endangered species acts.*

*(c) On or before July 1, 2000, the Wildlife Conservation Board shall make a good faith offer to the Pacific Lumber Company for the purchase of the "Owl Creek" Tract.*

(d) The Legislature finds and declares that the appropriation and allocation of funds for the purposes of subdivision (a) is intended to demonstrate a good faith commitment on the part of the state to purchase the Owl Creek tract. The Legislature further finds and declares that the Wildlife Conservation Board shall undertake all feasible efforts to obtain private and nonprofit funding to assist in this purchase.

(d) This section shall remain in effect until ~~January 1, 2000~~ July 1, 2001, and as of that date is repealed unless a later enacted statute, *that is 'enacted before July 1, 2001,* extends or repeals that date.

SEC. 6. The provisions of this act shall not, in any way, be construed to create any precedent or requirement that would be applicable to any other future timber harvest plan, sustained yield plan, habitat conservation plan, or to otherwise restrict or prohibit any other activity affecting forest resources that is currently permitted under state law *other than those plans or activities that are subject to the requirements of this act* .

SEC. 7. *The provisions of this act are severable. If any provision of this or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to facilitate the acquisition of the Headwaters Forest pursuant to the September 28, 1996, agreement between the Pacific Lumber Company, the United States, and the State of California at the earliest possible time, thereby permanently preserving in public ownership the largest intact stand of ancient redwoods left in private ownership, it is necessary that this act take effect immediately.

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